

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Lighthouse Design & Construction (Roy Williams))
 District 2, Map 129, Control Map 129,) Dickson County
 Parcel 27.04P, Special Interest 004)
 Tax year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

Appraisal	Assessment
\$28,000	\$8,400

The State Board of Equalization ("State Board") has received an appeal by the taxpayer.¹

The undersigned administrative judge conducted a hearing of this matter on December 21, 2006 in Charlotte. The appellant, Roy Williams, represented himself at the hearing. Dickson County Assessor of Property Gail Wren was assisted by her personal property clerk, Amy Darnell.

Findings of Fact and Conclusions of Law

The appellant, a resident of White Bluff, has long been employed as senior architectural project manager by a Brentwood, Tennessee-based firm (Edwards & Hotchkiss Architects, PC). About two years ago, Mr. Williams obtained a general contractor's license. Anticipating the start-up of his own business to be called "Lighthouse Design and Construction," he purchased a business license from the Dickson County Clerk's office in March, 2005. The mailing address indicated on the business license was 1944 Highway 46 South, Dickson, TN 37055. That, Mr. Williams explained, was where his brother's trucking business was located.

When Ms. Darnell discovered Lighthouse Design and Construction on a printout of new business listings, she added a new tangible personal property account in that name to the Assessor's 2006 tax roll. On January 30 of that year, she mailed a tangible personal property schedule (with reporting instructions) to Mr. Williams at the above address. The schedule was not completed and returned by the March 1 deadline; consequently, on May 31, 2006, the Assessor's office sent a NOTICE OF FORCED ASSESSMENT in the amount shown above to the same address. This notice informed the taxpayer that:

¹This appeal was electronically filed by Roy Williams on July 26, 2006. The State Board received a completed and sworn appeal form from Mr. Williams on August 18, 2006.

You will have until the final day of the County Board of Equalization to submit your schedule. That deadline date is **Wednesday, June 14, 2006**. [Emphasis original.]

As it turned out, Mr. Williams never established a business in Dickson County; nor, according to his testimony, did he regularly check for mail at the address shown on his business license.² While the notice of forced assessment did eventually come to his attention, it was not until early July, 2006 – after the county board of equalization (“county board”) had adjourned its regular annual session – that he contacted the Assessor’s office about the possibility of obtaining relief. This appeal to the State Board ensued.

Article II, section 28 of the Tennessee Constitution provides that “all property real, personal or mixed shall be subject to taxation” unless exempted by the legislature. State Board Rule 0600-5-.04(1) requires the assessor to furnish “every potential commercial and industrial personal property taxpayer on or before February 1” with a form for the listing of all tangible personal property used (or held for use) by such taxpayer in its business or profession. The assessor is obliged to make a forced assessment against any taxpayer who fails to complete and return the required schedule by March 1. Tenn. Code Ann. section 67-5-903(c). A taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and state boards of equalization; however, Tenn. Code Ann. section 67-5-1412(b)(1) states that:

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer’s or owner’s assessment or change in classification as provided for in section 67-5-508.

In 1991, the Tennessee General Assembly enacted an amendment which affords a taxpayer the opportunity for a hearing to demonstrate “reasonable cause” for failure to contest an assessment before the county board of equalization. Tenn. Code Ann. section 67-5-1412(e). The Assessment Appeals Commission, appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502, has declared that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the “reasonable cause” provisions to waive these requirements except where the failure to meet them is due to **illness or other circumstance beyond the taxpayer’s control**...[Emphasis added.]

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), pp. 2—3.

Respectfully, after reviewing all the evidence of record, the administrative judge cannot recommend acceptance of this appeal. Ms. Darnell justifiably relied on the address shown on Mr. Williams’ business license for the mailing of the aforementioned notice of forced

²Mr. Williams was apparently unaware of the personalty tax imposed by Tenn. Code Ann. sections 67-5-901 *et seq.*

assessment. The validity of an assessment change notice which is sent to the taxpayer's last known address does not depend on whether it is actually received. See Tenn. Code Ann. section 67-5-508. Further, since the notice was sent more than ten days before the end of the county board's annual session, Mr. Williams did not have a right of direct appeal to the State Board under the terms of Tenn. Code Ann. section 67-5-508(b)(2). It is also clear that no circumstance beyond his control precluded him from appealing this assessment to the county board.

Like other administrative agencies, the State Board has only such powers and duties as are delegated to it by the legislature. To whatever extent, then, a taxpayer's right of appeal to the State Board is conditioned on compliance with deadlines or other statutory requirements, this agency must abide by such limitations. Accordingly, the Tennessee Attorney General has opined that:

The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a jurisdictional prerequisite which cannot be waived by the consent of the parties.

Tenn. Atty. Gen. Op. 92-62, p. 10.

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5th day of January, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Roy Williams
Gail Wren, Dickson County Assessor of Property

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